

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CIVIL REVISION APPLICATION No 1233 of 1997
with
CIVIL REVISION APPLICATION NO.1234 of 1997

For Approval and Signature:

Hon'ble MR.JUSTICE M.S.SHAH

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
 2. To be referred to the Reporter or not?
 3. Whether Their Lordships wish to see the fair copy of the judgement?
 4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
 5. Whether it is to be circulated to the Civil Judge?

PRAVINKUMAR ODHAVJIBHAI

Versus

AJANTA TRANSISTOR CLOCK MANUFACTURING COMPANY

Appearance:

MR BD KARIA for Petitioners

CORAM : MR.JUSTICE M.S.SHAH

Date of decision: 12/09/97

ORAL JUDGEMENT

Both these revision applications are directed against the common order dated August 28, 1997 passed by the learned District Judge, Rajkot, allowing Civil Misc. Application Nos. 117 and 118 of 1997 for transferring Regular Civil Suit No.321/97 and 340/97 pending in the Court of the learned First Joint Civil Judge (J.D.), Morvi to the Court of the learned Civil Judge (S.D.),

Morvi, for disposal according to law.

2. The present petitioners who are some of the partners of M/s Ajanta Transistor Clock Manufacturing Co. have filed Special Civil Suit Nos. 10, 11 and 292 of 1997 in the Court of the learned Civil Judge (S.D.) Morabi against the said partnership firm and the remaining partners of the firm on account of certain disputes amongst the partners. Thereafter present respondent nos. 1 to 3 i.e. partnership firm and two of its partners have filed Regular Civil Suit Nos. 321 of 1997 in the Court of the learned Civil Judge (J.D.) Morvi against the petitioners and other partners of the firm. Respondents nos. 1 to 3 have also filed Regular Civil Suit No. 340 of 1997 against Indus Ind Bank Ltd. for directions to the effect that the bank should not allow the bank account of the partnership to be operated without signatures of all the partners. The petitioners herein were not joined as defendants in that suit and subsequently at their instance they have been joined as defendants in the said suit.

3. The present petitioners also moved an application for the stay of Civil Suit No. 321 of 1997 under Section 10 of the CPC on the ground that the previous suit filed by the petitioners on the same subject matter was already pending in the Court of the learned Civil Judge (S.D.) Morvi and therefore, Civil Suit No. 321/97 was required to be stayed. That application came to be granted by the learned Civil Judge (J.D.) Morvi.

Thereafter respondents nos. 1 to 3 i.e. the plaintiffs of Regular Civil Suit No. 320/97 and 340/97 moved the present Civil Misc. Application Nos. 117 and 118 of 1997 for the transfer of the said two suits 321/97 and 340/97 from the Court of the Civil Judge (J.D.) Moravi to the Court of the learned Civil Judge (S.D.), Morvi. These transfer applications under section 24 of the CPC were moved before the learned District Judge who has allowed both the applications as stated above.

5. Looking to the subject matter of the five suits, it cannot be said that the learned District Judge has committed any jurisdictional error in passing the order for transferring these two suits from the Court of the learned Civil Judge (J.D.) to the Court of the learned Civil Judge (S.D.), where three previous suits filed by the petitioners are already pending in respect of the disputes amongst the partners of the same partnership firm-respondent no. 1 herein. The petitioners themselves had obtained stay of Reg. Civil Suit No. 321 of 1997

under Sec. 10 CPC which fact also supports the case for transfer.

6. Mr.Karia for the petitioners, however, vehemently objected to the order under challenge on the ground that the learned District Judge has made certain observations which cast aspersion on the ability of the learned Civil Judge (J.D.), especially the following observations in paragraph 27 of the order:

" Moreover, parties will get benefit of a senior Judge who is well experienced and seasoned Judge then Joint Civil Judge, Jr.Dn...."

There is some substance in the aforesaid grievance and the learned District Judge ought not to have made such observations. The Court of a Civil Judge (J.D.) is as much a Court and as competent as the Court of a Civil Judge (S.D.). The distribution of the work amongst different Civil Courts depending on the valuation of the suit or subject matter of the suit whether, under the provisions of the Bombay Civil Courts Act, 1890 or any other law or administrative orders, is for more systematic management of the Courts and the Court of the Civil Judge (J.D.) is not to be denigrated in this manner. The aforesaid observations made by the learned District Judge were uncalled for while deciding the transfer applications.

In fairness to the learned District Judge, it should however, be said that the learned District Judge might not have intended to cast any doubt on the ability of the learned Civil Judge (J.D.) but looking to the vehemance with which the transfer applications were being resisted by the present petitioners and the Bank, the learned Disitriect Judge possibly intended to mollify them by making the aforesaid observations so that the petitioners may not treat the order as adverse to them and the petitioners would rest content with the order under appeal. Even if that was the intention, it must be stated that once the order for transfer of the two suits in question from one Court to another at Morvi was justified on merits, it was no part of the duty of the learned Disitriect Judge to molliify the petitioners and that too in this manner. The observations however, do not affect the merits of the decision and are,therefore, required to be ignored.

7. Mr.Karia further submitted that respondent nos. 1 to 3 had already appeared as defendants in the suits

filed by the petitioners in the Court of the learned Civil Judge (S.D.) and knew full well about the subject matter of the aforesaid three suits including Special Civil Suit No.292/97. Mr.Karia submitted that the learned District Judge has not properly appreciated the conduct of respondents nos. 1 to 3 in filing the two suits in the Court of the learned Civil Judge (J.D.) Morvi when the Special Civil Suits filed by the petitioners on more or less the same subject matter or connected subject matter between the same parties were already pending before the learned Civil Judge (S.D.) Morvi and the defendants nos. 1 to 3 filed transfer applications only after the learned Civil Judge (J.D.) stayed the proceedings of Reg.Civil Suit No.321/97 under section 10 CPC.

8. In view of the fact that the orders of transfer are otherwise justified looking to the subject matter of the five suits, I have not examined the aforesaid grievance made on behalf of the petitioners. If any inconvenience has been caused to the petitioners or other parties on account of respondents nos. 1 to 3 having filed the two suits in the Court of the learned Civil Judge (J.D.), Morvi, it will be open to them to request the Court of the learned Civil Judge (S.D.) Morvi for passing appropriate orders of costs even at the stage of hearing of interim injunction applications.

9. Subject to the aforesaid observations, both these Civil Revision Applications are hereby dismissed.

(M.S.Shah J.)

sharma.